

NORDLUND PROPERTIES
June 17, 2002
Comments Regarding
Natural Resource Damage Settlement Proposal Report
(Public Review Draft: March 14, 2002)

A. General Comments.

1. Nordlund Properties would like to resolve its natural resource liability but finds the Trustees' settlement proposal to be very difficult to understand and respond to.
2. The Trustees have spent several years developing the data to support their settlement proposal. A ninety-day comment period is simply not enough time to adequately assess and comment upon such a detailed and complicated settlement proposal.
3. The Trustees claim to have identified significant evidence of natural resource injury based on their admittedly incomplete natural resource damage assessment for Commencement Bay. The settlement proposal provides some information regarding the damage assessment but primarily focuses on the conversion of damages to discounted service acre years (DSAYs) using the habitat equivalency analysis (HEA).

The Trustees assert that 2,438 DSAYs are required to compensate for natural resource damages. If each DSAY is conservatively estimated to cost \$10,000, the value of the alleged damages exceeds \$24 million. The settlement proposal contains virtually no information with which a PRP can evaluate the underlying basis for the Trustees' \$24 million damage claim. A partial list of issues that warrant further discussion and/or explanation include:

- the Trustees' assumptions regarding baseline natural resource conditions;
 - the Trustees' method for determining chronic and acute effects;
 - the level of uncertainty associated with the damage assessment; and
 - whether bioassay data generated by the Hylebos Cleanup Committee have been factored into the damage assessment.
4. The settlement proposal assumes that sediment remediation in the Hylebos Waterway will be complete in 2003. (Proposal at 13). This assumption may prove to be optimistic. How will the settlement proposal be affected, if the sediment remediation is not completed in 2003?
 5. The settlement proposal acknowledges that the Trustees have not attempted to apportion liability among multiple parties at a single site or facility. (Proposal at 17). For those PRPs associated with a multiple party site, it is impossible to

evaluate the fairness of the settlement without knowing how the Trustees view the intra-parcel allocation.

6. The Trustees' allocation is based on publicly available information. (Proposal at 18). This information is incomplete and often inaccurate. On occasion where the information is accurate, the application of the information is unreasonable or simply wrong. Specific examples are discussed below.
7. The Trustees have used a mass-loading approach to allocate liability for PAHs and PCBs. (Proposal at 18). This has resulted in the smaller potential sources receiving an unreasonably large share of liability relative to the larger sources. Specific examples are set forth below.
8. The settlement proposal assigns each party a share of DSAYs rather than dollars. (Proposal at 19). This approach makes it very difficult for parties with the smallest shares of liability to resolve their obligations easily and with minimal transaction costs. The smaller PRPs want to "cash out" but under the Trustees' proposal, it is impossible to quantify the settlement offer. The smaller parties have neither the inclination nor the expertise to undertake mitigation projects; they simply want to pay cash and walk away. The Trustees' proposal does not offer any such relief.
9. The Trustees have provided the PRPs with a CD containing copies of the supporting documents. However, not all of the documents cited in the settlement report as a basis for assigning liability are included on the CD and therefore were not available for review. Specifically, Document No. 261 is repeatedly cited in Appendix H as the basis for allocating liability to parties but this document is neither described in the list of supporting documents nor is a copy of the actual document included on the CD. See Appendix H "Hylebos Waterway NRDA Allocation References," page 13 of 17.

B. Specific Comments.

1. The municipal roadways and runoff associated with motor vehicle operation were not included as sites for purposes of the study. (Appendix H at 10). As demonstrated at other waterways in Commencement Bay, stormwater runoff from roads and urban/residential property has been found to be a significant source of PAHs, BEP, and other substances of concern. City storm drains discharge directly to the Hylebos Waterway at multiple locations. The Trustees' decision to apparently exclude these obvious pathways has resulted in the City of Tacoma receiving a lesser share of PAHs than Nordlund Properties and other small businesses. This is an absurd result. There is only the most tenuous evidence that Nordlund Properties is a source of PAHs. On the other hand, the

City storm drains discharge PAHs and other SOC's to the Hylebos Waterway every time it rains. The City of Tacoma's allocable share of PAHs should be significantly increased and the shares of Nordlund Properties and other small businesses should be reduced.

2. The Trustees assert that in order to subject a site to allocation, some activity must be conducted which was reasonably likely to have involved an SOC. (Appendix H at 21). The Trustees have provided no evidence of a release of SOC's from Nordlund Properties.

With respect to PAHs, the only evidence offered by the Trustees regarding PAHs is set forth in the Site Activity Report at 18 and the Site Contamination Report at 32, both of which cite Document No. 39 and the removal of 3 USTs. Please note: Document No. 39 does not refer to real property that has ever been owned or operated by Nordlund Properties. The site address on Document No. 39 is 1621 Marine View Drive. Nordlund Properties owns the parcel that constitutes 1622, 1624, 1626, 1628, and 1630 Marine View Drive. 1621 Marine View Drive is in fact located across the street from Nordlund Properties. Moreover, as Document No. 39 plainly states on its cover page, the report was prepared for Michael Parsons and 1621 Marine View Dr., Inc. Neither this individual nor this corporation has any connection to Nordlund Properties.

With respect to releases of arsenic, lead, copper, and zinc, the only evidence offered by the Trustees is set forth in the Site Contamination Report at 32, which cites Document No. 38. Again, please note that the subject of Document No. 38 is Marine View, Inc. and property located at 1621 Marine View Drive that is used for concrete and asphalt recycling. Nordlund Properties has no association with this property or the businesses that operate there.

With respect to releases of, the only evidence offered by the Trustees is Document No. 261. As noted above, the Trustees have failed to provide the PRPs with either the title or a copy of Document No. 261. Nordlund Properties is therefore unable to refute the contentions that may be set forth in this document. Nevertheless, we note that any association with these SOC's must be tenuous because Nordlund Properties has not been assigned an allocable share for releases of DMPH or DOPH.

In sum, the Trustees have not presented any evidence that Nordlund Properties is associated with an activity that is reasonably likely to have resulted in the release of any SOC.

3. Even if the Trustees determine that every business operating on the Hylebos should be allocated some share of liability for PAH releases, the share assigned to Nordlund Properties is too high relative to other PRPs.

For example, Louisiana Pacific and Wasser & Winters received the same share as Nordlund Properties (4.63 DSAYs) and Dunlap Towing received a lesser share (4.34). All three forest products companies operated heavy equipment out of doors on property adjacent and draining to the Hylebos. With few exceptions, Nordlund's boat building activities have occurred inside buildings with no floor drains. LP has operated on its site 15 years longer than Nordlund's boat building activities. Moreover, the Trustees' supporting documents provide ample evidence that the operations at these log yards were the source of PAH releases to the waterway. Oil spills were identified at the Dunlap Towing parcel. (Document Nos. 215 and 216). The Wasser & Winter's parcel is identified as the location of fuel and oil storage along the Hylebos Creek bank, with evidence of staining along the Creek bank. (Document No. 260). As noted above, there is no such evidence of PAH releases from Nordlund Properties.

Also, the PAH share assigned to Nordlund Properties is far too high when compared to other boat yards. Tacoma Boat's PAH share is only 2-1/2 times greater than Nordlund's. But the Trustees' supporting documents demonstrate that Tacoma Boat was a far more significant source of PAHs: waste oil tanks were found to be draining to the Hylebos and a large sheen was present (Document No. 285); leaking waste oil drums were observed and PAHs were found to have been released to the stormdrains (Document No. 60); gasoline and diesel were detected in the groundwater (Document No. 107). Jones-Goodell Boatbuilding received the same PAH share as Nordlund Properties but the Trustees' supporting documents provide evidence of far more extensive use and release of PAHs than Nordlund. (See Document Nos. 48, 102, 332).